

Record of Proceedings
of the
INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The United States of America, the Republic of China,
the United Kingdom of Great Britain and Northern Ireland,
the Union of Soviet Socialist Republics, the Commonwealth of
Australia, Canada, the Republic of France, the Kingdom of
the Netherlands, New Zealand, India, and the Commonwealth
of the Philippines

-Against-

ARAKI, Sadao; DOHIHARA, Kenji; HASHIMOTO,
Kingoro; HATA, Shunroku; HIRANUMA, Kiichiro; HIRO-
TA, Koki; HOSHINO, Naoki; ITAGAKI, Seishiro; KAYA,
Okimori; KIDO, Koichi; KIMURA, Heitaro; KOISO, Kuni-
aki; MATSUI, Iwane; MATSUOKA, Yosuke; MINAMI,
Jiro; MUTO, Akira; NAGANO, Osami; OKA, Takasumi;
OKAWA, Shumei; OSHIMA, Hiroshi; SATO, Kenryo; SHI-
GEMITSU, Mamoru; SHIMADA, Shigetaro; SHIRATO-
RI, Toshio; SUZUKI, Teiichi; TOGO, Shigenori; TOJO,
Hideki; UMEZU, Youshijiro;

-Accused-

Official Court Reporters

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John J. Smith
Daphne Spratt
Elvira Whalen
Julian Wolf
Lorraine Yelden

22 JULY 1946

Page 1.

I N D E X

Of

WITNESSES

Prosecution's Witnesses

Direct Cross

Ching Teh-chun

2298

2335
2361

I N D E X

Of

EXHIBITS

Pros. No.

Description

For In
Ident. Evidence

198

Statement made by General
Ching Teh-chun

2297

199

Same as above

2297

200

Photograph of
Pinj-Han Railroad Bridge

2308

2308

201

Bird's-eye view of Lukuochiao

2308

2308

I N D E X

Of

MOTIONS, ARGUMENTS, DECISIONS, OBJECTIONS IN
OPEN COURT

Page

Change of American Defense Counsel for
Accused TOGO, Shigenori

2296

Statement that Chinese interpreters had
been sworn

2299

Objection by Major Blakeney to reading of
statements of Ching Teh-chun

2301

Argument re Chinese interpreters

2303-2306

Mr. W. F. S. Fang sworn as Chinese
interpreter

2306

Waiver as to certificate

2309

Objection by Mr. McManus as to reading of
statements

2324

22 JULY 1946

Page 2.

Page

Objection overruled	2324
Challenge to Member Honorable Major General Myron C. Cramer, Representative of the United States, and arguments thereon	2342-2360
Decision Reserved	2360
Challenge overruled and motion dismissed	2361

- - - -

Monday, 22 July, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before with
the addition of MAJOR BEN BRUCE BLAKENEY as additional
Counsel for Accused TOGO, Shigenori.

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(English to Japanese, Japanese to
English, English to Chinese, and Chinese to
English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session
3 and ready to hear any matter brought before it.

4 THE PRESIDENT: All the accused are present
5 except OKAWA and HIRANUMA, who are represented by
6 counsel.

7 Does any counsel desire to mention any
8 matter?

9 Mr. Yamaoka.

10 MR. YAMAOKA: If the Tribunal please, I de-
11 sire to announce this morning the appearance of Major
12 Ben Bruce Blakeney, who is already counsel for General
13 UMEZU, as the additional American defense counsel for
14 the accused TOGO, Shigenori. He has duly filed his
15 appearance with the Secretariat.

16 THE PRESIDENT: Colonel Morrow.

17 COLONEL MORROW: If the Court please, I
18 desire to call out of turn, pursuant to permission
19 of this Court, a witness from the Republic of China,
20 General Ching Teh-Chun.

21 THE PRESIDENT: The Tribunal has no objec-
22 tion. You may call the General.

23 COLONEL MORROW: And in connection there-
24 with, if the Court please, I desire to present two
25 affidavits, entitled document No. 2340 and document

1 No. 1750, which are statements made by the General,
2 which we intend to submit as his testimony in chief.

3 CLERK OF THE COURT: Document No. 1750 will
4 be marked exhibit 198. Document No. 2340 will be
5 marked exhibit No. 199.

6 (Whereupon, the documents above re-
7 ferred to were marked prosecution's exhibits
8 No. 198 and No. 199 for identification.)

9 THE PRESIDENT: This is not an affidavit,
10 Colonel.

11 COLONEL MORROW: I see I probably in-
12 accurately stated what it was. It is a statement.

13 THE PRESIDENT: Well, you have no order
14 covering it.

15 COLONEL MORROW: I desire to submit these
16 statements to the General for his scrutiny now.

17 MARSHAL OF THE COURT: Mr. President, the
18 witness is now in court and will be sworn.

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1 CHING TEH - CHU N, called as a witness,
2 on behalf of the prosecution, being first duly
3 sworn, testified as follows:

4 COLONEL MORROW: If the Court please, I
5 understand that these statements were taken with
6 the solemnity and in the manner that a truthful
7 statement is submitted by a national of the Republic
8 of China.

9 THE PRESIDENT: Is that the Chinese form?

10 COLONEL MORROW: I understand it is the
11 Chinese form, yes, sir. The General's statements
12 to be received according to his conscience as the
13 truth.

14 THE PRESIDENT: We understand from the
15 representative of China that this is a Chinese
16 form. On that understanding, we will allow you to
17 ask the witness whether the contents are true and
18 to swear to their contents in the usual way as if
19 it were an affidavit.

20 DIRECT EXAMINATION

21 BY COLONEL MORROW:

22 Q I will ask the General therefore, if he is
23 General Ching Teh-~~chun~~, who has made the statements
24 now in his hands, and if they are the truth, con-
25 stitute the truth in accordance with his conscience?

CHING

DIRECT

1 A The facts therein stated are true except
2 for the fact that there are two words which are in
3 error. The first error is with respect to the
4 July 7 Incident, paragraph 2, under "B. Stages of
5 Japanese Aggressions," with reference to economic
6 monopoly. In the Chinese text of the statement the
7 name of the railroad is given in the text as the
8 Tsang-shih Railway. The correct name for this rail-
9 way is the Tsin-Shih Railway. In the last part of
10 the statement the Chinese text gives my title as
11 Commander of the 29th Army, when it should correctly
12 read Deputy Commander of the 29th Army.

13 CAPTAIN BROOKS: If the Tribunal please,
14 for a matter of the record, I don't know whether
15 it has been observed or not whether the Chinese
16 translators have been sworn or not. I would just
17 like, as a point of information, to know whether
18 they have.

19 THE PRESIDENT: I inquired and found that
20 they were.

21 CAPTAIN BROOKS: Thank you.

22 MR. WARREN: If the Tribunal please, some
23 of the defense counsel are under the impression, as
24 I am, that the Chinese is being interpreted into
25 Japanese and then from Japanese into English. This

1 question will arise from time to time. We feel
2 that such a method gives for a very imperfect trans-
3 lation, and if that is the case we ask the Tribunal
4 to rectify it so that the Chinese will be interpreted
5 directly into English, instead of going from Chinese
6 to Japanese and then to English.

7 COLONEL MORROW: That is not the case here,
8 if the Court please. Did the Court make a ruling
9 on that matter?

10 THE PRESIDENT: I want to know what is being
11 done, Colonel. Can you tell me?

12 COLONEL MORROW: I don't know, sir, whether
13 they are translating directly into Japanese or
14 English. I understand what he refers to is the
15 situation now and not the affidavits themselves,
16 or the statements. They have been translated cor-
17 rectly from Chinese to English or vice versa.

18 LANGUAGE SECTION CHIEF: May it please the
19 Tribunal, I think I can give some light on this.
20 As it is at present, the English is being inter-
21 preted into Japanese and the Japanese is being in-
22 terpreted into Chinese, and the witness' answer
23 is being translated from Chinese into Japanese and
24 into English. We have one Chinese monitor, who
25 monitors the Chinese-Japanese translation, and we

CHING

DIRECT

1 have one Japanese-English monitor, who supervises
2 the Japanese-English.

3 THE PRESIDENT: That appears to be in order.
4 We understand that substantially the position is
5 this: That the Chinese is being translated into
6 English directly from the Chinese and not through
7 the Japanese.

8 MR. WARREN: If the Tribunal please, that
9 does not appear to be the case.

10 LANGUAGE SECTION CHIEF: May I clarify that
11 point? The Chinese into Japanese, then Japanese
12 into English. We do not have any one who speaks
13 Chinese and English. We only have a Japanese-English
14 interpreter and a Chinese-Japanese interpreter. No
15 Chinese-English interpreter.

16 CAPTAIN BROOKS: If the Court please, I
17 would like to enter an objection to proceeding out of
18 turn on this witness until proper interpretation is
19 provided. The transfer of the thought from Chinese
20 to Japanese and then from Japanese to English, when
21 the characters and ideologies are purely in the
22 translator's hands, a double translation like that
23 endangers a lot of time. The thoughts and expressions
24 of the man's ideas as put before the Court involves
25 a legal precept, because the play on the words and

CHING

DIRECT

1 ideas can mean various things. I think for a matter
2 of expediency and fairness in the trial, all of those
3 intervening factors that can be cut out should be
4 done if possible. I believe it is possible to get
5 proper translators.
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1 THE PRESIDENT: The Court is fully aware of
2 all the matters stressed by Mr. Brooks and is keeping
3 them in mind, and for these reasons the Court thinks
4 the translation should be from Chinese into English
5 direct if we have the translators to it. We think
6 there must be translators in Tokyo today who can do
7 this. We think if you made an effort to get them you
8 would succeed.

9 JUDGE HSIANG: This problem was considered
10 by the prosecution. Of course, the matter is to be
11 decided by the Court. At first we were told that the mem-
12 bers of the prosecution, Chinese members of the
13 prosecution, perhaps would not be good parties to
14 translate for the witness produced by the prosecution.
15 That was why Chinese members, Chinese assistants, on
16 the prosecution were not asked to translate. We did
17 not offer that service.

18 Of course, this matter was for the Court to
19 decide. If the Court thinks that the members, assist-
20 ants, on the prosecution could do the translation
21 work, that is different. So, in the absence of other
22 members who could do the Chinese translation, this
23 arrangement was made, I understand.

24 THE PRESIDENT: It will never do to have
25 prosecution translators except perhaps in some great

CHING

DIRECT

1 extremity which I do not contemplate.

2 COLONEL MORROW: Well, if the Court please,
3 we have been asking merely preliminary questions here.
4 We have monitors whose sworn duty it is to accurately
5 criticize what proceeds. And I am requesting, if the
6 Court, please, or asking that we be allowed to read
7 these affidavits, at all events, because this has been
8 done as to the affidavits; namely, a translation
9 direct from Chinese to English. So far the transla-
10 tions have been merely of preliminary questions.

11 THE PRESIDENT: If the difficulty is great
12 now, it is going to be insuperable when you reach the
13 stage of cross-examination. So you had better en-
14 deavor to get a Chinese who can translate from Chinese
15 into English, or an Englishman, or somebody.

16 COLONEL MORROW: If the Court please, we
17 have several young men here from China who can do
18 this job. It may be that there is the possible dis-
19 ability that they have been from the prosecution, but
20 we have a monitor and if there is no objection on the
21 part of defense, we might go forward with the affi-
22 davits and when the time comes have these gentlemen do
23 the translating.

24 I understand that Judge Mei has an assistant
25 here, if the Court please, that may be used.

CHING

DIRECT

1 THE PRESIDENT: I think you should get a man
2 from the Chinese Mission.

3 COLONEL MORROW: If the Court please, I under-
4 stand that the translators here were chosen by the
5 Court. That was not a function of the prosecution, and
6 we are in the situation of having the criticism on the
7 part of the defense of the facilities offered by the
8 Court for conducting this trial.

9 THE PRESIDENT: The Court made appointments as
10 necessity arose from time to time. You have not advised
11 that this difficulty was going to arise, and we could
12 not know except from you. But we do not want recrim-
13 inations. We want this matter straightened out at
14 once.

15 COLONEL MORROW: If the Court please, the
16 prosecution notified the Secretary of the Court about
17 this situation several weeks ago that we expected
18 Chinese to be introduced as witnesses and asked about
19 the translation and understood it was to be furnished.
20 We had no way of anticipating this problem.

21 THE PRESIDENT: I understand that Justice Mei's
22 secretary, who would be in an impartial position,
23 would be able to make the necessary translations if
24 there is no objection from the defense.

25 MR. WARREN: If the Tribunal please, I have

CHING

DIRECT

1 heard no objection voiced from any defense counsel,
2 and there does not appear to be any objection. One
3 defense counsel did suggest that perhaps we should
4 reserve the right to a monitor. Personally I would not
5 insist on that, but I am expressing the view of the
6 other counsel as they have a right to be expressed. We
7 think that that would be a convenient temporary arrange-
8 ment until proper arrangement can be made to relieve
9 the assistant, if he would be kind enough to assist us.

10 THE PRESIDENT: Yes. Justice Mei's secretary,
11 Mr. Fang, is prepared to act and will now be sworn in
12 as interpreter. This is a temporary arrangement only,
13 of course, and we must take steps immediately to have
14 translators provided.

15 MARSHAL OF THE COURT: The interpreter will
16 now be sworn, Mr. President.

17 (Whereupon, Mr. W.F.S. Fang was sworn as
18 Chinese-English and English-Chinese interpreter.)

19 THE PRESIDENT: You must begin again, Colonel
20 Morrow.

21 COLONEL MORROW: I suggest, if the Court please,
22 that I be allowed to proceed where we stopped, and if
23 there is any question about these preliminary questions--

24 THE PRESIDENT: I said you must begin again.

25 COLONEL MORROW: Begin again?

CHING

DIRECT

1 BY COLONEL MORROW (Continuing):

2 Q I will ask the witness to look over the two
3 statements which have been presented to him and state
4 whether or not those are and constitute part of his
5 sworn testimony in this case?

6 A I have read this over and they were my state-
7 ments.

8 Q Are those statements true and correct?

9 A Yes, they are.

10 Q I also desire to present to the witness exhib-
11 its No. 2211 and 2212 and ask if he can identify the
12 same and what they are?

13 A This is a bridge between Lukuochiao. Here is
14 a railroad bridge which is Pinj-Han Railroad Bridge
15 across the Yunting River. The second one is a bird's-
16 eye view of Lukuochiao.

17 THE PRESIDENT: Those exhibits will be ten-
18 dered? They are tendered for identification so far.
19 Now they are finally tendered, are they?

20 COLONEL MORROW: I should have said documents
21 instead of exhibits, if the Court please.

22 CLERK OF THE COURT: Document No. 2211 will
23 be exhibit No. 200. Document No. 2212 will be exhibit
24 No. 201.

25 (Whereupon, the documents above

CHING

DIRECT

1 referred to were marked prosecution's exhibits
2 Nos. 200 and 201 for identification.)

3 THE PRESIDENT: Admitted.

4 (Whereupon, prosecution's exhibits
5 Nos. 200 and 201 were received in evidence.)

6 COLONEL MORROW: Unless there is objection,
7 if your Honor please, I want to read these documents
8 or exhibits commencing with document No. 2340 which
9 are the testimony of the witness.

10 MR. BROOKS: If the Tribunal please, I do not
11 believe the prosecution has shown any tie-up between
12 the English translation here and the Japanese or Chi-
13 nese, whichever it is, that was handed to the witness.
14 It does not show that that has been checked in any way,
15 that it is proper. At least we have not seen it.

16 The prosecutor hands me a certificate here
17 by someone stating that this has been translated by
18 him to the best of his ability and knowledge, and I do
19 not know whether that will be considered as sufficient
20 or not. The man evidently was not sworn in this Court.
21 I do not know his name. I think it is Liu. I think
22 there should be a further showing that this is accurate,
23 and we should have it through the witness that it is
24 accurate.

25 THE PRESIDENT: Unless the defense is prepared

CHING

DIRECT

1 to accept the certificate you must call the person
2 responsible for the translation from the English to
3 the Chinese.

4 COLONEL MORROW: If the Court please, the
5 gentleman who did the translating is here. He has the
6 certificate in his hands. And it seems to me we have
7 made prima facie proof here that the translation is
8 correct. If the Court desires him sworn he may be
9 sworn as a preliminary witness here.

10 THE PRESIDENT: The Court has no particular
11 desires except to do the right thing. It may be the
12 defense will accept that certificate.

13 COLONEL MORROW: Unless the defense indicates
14 a desire to waive their objection, I will ask this wit-
15 ness be sworn.

16 THE PRESIDENT: It might save time to swear
17 him.

18 MR. BROOKS: If the Tribunal please, although
19 this man is a part of the prosecution's staff, I think
20 that defense will be satisfied if the corrections can
21 be made at a later time. But we will have to have made
22 available to us in some way some kind of a Chinese-
23 English translator that could check this for accuracy,
24 and if we can make corrections at a later time we will
25 be willing to waive the aforementioned certificate.

CHING

DIRECT

1 I had not seen this certificate; I did not know what
2 it was.

3 THE PRESIDENT: We refer the defense to the
4 Language Section for any help they need. In the mean-
5 time we will make any necessary appointments of Chi-
6 nese translators.

7 Proceed, Colonel Morrow.

8 COLONEL MORROW: If the Court please--

9 THE PRESIDENT: Better tender that certificate.

10 COLONEL MORROW: Very well. I will submit
11 this certificate to the Clerk.

12 THE PRESIDENT: Admitted.

13 COLONEL MORROW: If the Court please, I desire
14 to read now exhibit 199, which was document 2340.

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"FACTS OF JAPANESE AGGRESSION

IN NORTH CHINA

"(I) NORTHERN CHAHAR INCIDENT

1 "In June 1935, two Japanese army officers
2 and two Japanese soldiers came from Doran by motor car
3 and passed through Chang Pei District en route to
4 Kalgan. When they arrived at the north gate of the
5 Chang Pei District, they did not submit themselves to
6 the inspection of the guards, nor did they possess
7 entry permits. (Regulation requires that Japanese
8 entering the Province of Chahar should secure in ad-
9 vance through the Japanese Consul at Kalgan entry
10 permits from the Chahar Provincial Government.)
11 Under these circumstances, the commanding officer of
12 the guards at the north gate of the Chang Pei Dis-
13 trict took these four men to the Headquarters of
14 General CHAO Tang-yu, Commander of the 132nd Division,
15 inside the city of Chang Pei. Commander CHAO asked
16 by telephone for instructions from General SUNG
17 Che-yuan, Commander of the 29th Army, at Kalgan, who
18 permitted these Japanese to proceed to Kalgan through
19 Chang Pei, stressing, however, that this should not
20 be taken as a precedent and that hereafter those de-
21 siring to enter the Province must have entry permits
22 with them as prescribed by regulations. These four

CHING

DIRECT

1 Japanese went on to Kalgan, and further proceeded to
2 Peiping.

3 "After the departure of the said Japanese,
4 HASHIMOTO, the Japanese Consul at Kalgan, suddenly
5 protested, alleging that while the guards demanded
6 to search these Japanese officers and men at the
7 north gate of the Chang Pei District they aimed their
8 rifles at them, and that they were detained for four
9 or five hours after arriving at the Headquarters of
10 the Division, and that such constituted insults to
11 the Japanese army men. He demanded the punishment
12 of responsible officers and apology from the Chinese
13 authorities. He also demanded assurance against
14 recurrence of similar nature. General SUNG ordered
15 me to negotiate in the capacity of the Deputy Com-
16 mander of the 29th Army. After several talks,
17 HASHIMOTO suddenly announced that the situation of
18 the incident became grave and it was beyond the power
19 of the Consul to settle it. The matter was referred
20 to the Headquarters of the Japanese Garrison Forces
21 in Tientsin. Major General DOHIHARA was the repre-
22 sentative of the Garrison Forces. Thereupon, I went
23 to Peiping and DOHIHARA also arrived at Peiping,
24 where we proceeded with our negotiations.
25

CHING

DIRECT

1 "The results of the negotiations were
2 roughly as follows:

3 "(a) The Regiment Commander who was in
4 charge of the garrison at the said gate should be
5 dismissed and punished.

6 "(b) The Judge Advocate of the Headquart-
7 ers of the 132nd Division whodetained these Japanese
8 officers should be dismissed and punished.

9 "(c) The units of the 29th army should be
10 withdrawn from Paochang, Kangpao, Shangtu, Kuyuan and
11 Huatch (Chia-pu-shih), these being Districts north of
12 Chang Pei. The maintenance of peace and order there
13 should be entrusted to the Peace Preservation Corps.

14 "(d) Chinese should henceforth refrain from
15 migrating to and settling in the northern part of the
16 Chahar Province.

17 "(e) Activities of the Kuomintang Party
18 should be withdrawn from the Chahar Province.

19 "(f) Anti-Japanese institutions and anti-
20 Japanese acts in the Chahar Province should be
21 banned.

22 "The proceedings and the results of the said
23 negotiations were telegraphically reported to the
24 Central Government by General SUNG and myself asking
25 for the Government's necessary approval. The Chinese

CHING

DIRECT

1 Government, in seeking for peace, did not refrain
2 from making compromises one after another, yet the
3 progress of the aggressions by Japanese militarists
4 never ceased. During the said negotiations, although
5 TAKAHASHI, Wataru, Military Attache of the Japanese
6 Embassy in China, also participated, it was DOHIHARA,
7 Kenji, who actually controlled the whole thing.

8 "(II) INDUCEMENT AND THREAT BOTH
9 PRIOR TO AND AFTER THE ESTABLISHMENT OF THE
10 HOPEI-CHAHAR POLITICAL COUNCIL

11 "When General SUNG Che-yuan was appointed
12 as the Garrison Commander of the Peiping and Tientsin
13 Area in September 1935, the Japanese sent DOHIHARA to
14 Peiping many times to instigate attempting to form a
15 North China Autonomous Government, to estrange the
16 local government from the central government.

17 "The inducement tactics were:

18 "(a) To install General SUNG Che-Yuan as
19 the leader of the North China Autonomous Government.

20 "(b) Japanese would extend every possible
21 aid concerning military and economic affairs in North
22 China.

23 "This was repeatedly expressed by DOHIHARA
24 to Mr. SHIAO Cheng-Ying, ex-Mayor of Tientsin, but
25 was refused on all occasions by the Chinese side.

CHINE

DIRECT

1 Later, MATSUMURO, Koryo, the Chief of the Japanese
2 Special Service Board in Peiping, and TAKAHASHI,
3 Wataru, the Military Attache of the Japanese Embassy
4 continued to make such demands from time to time.
5 They failed altogether. The Central Government
6 appointed General SUNG Che-yuan as the Chairman of
7 the Hopei-Chahar Political Council, to be in charge
8 of military and political affairs in Hopei and Chahar
9 Provinces and in Peiping and Tientsin. General SUNG's
10 measures in military and political affairs all con-
11 formed to the wishes of the Central Government, such
12 as the election for the people's Congress, and the
13 concentrated military training of college students,
14 all to the disfavor of the Japanese. The Japanese
15 then realized that their inducement tactics had failed.

16 "So the Japanese changed their inducement
17 tactics into threatening actions, which were as fol-
18 lows:

19 "(a) Political

20 1. According to the Japanese demand
21 General SUNG should announce by circular telegrams the
22 establishment of a North China Autonomous Government.

23 2. The Central Government's personnel
24 in charge of publicity still remaining in North China
25 should be withdrawn.

1 3. Public opinion in Peiping and
2 Tientsin should be controlled and opposition to auto-
3 nomy should not be permitted.

4 (The above three demands were directly
5 presented by DOHIHARA and TAKAHASHI, Wataru, to Mr.
6 SHIAO Cheng-ying)

7 "(b) Economic

8 1. A railway should be constructed
9 between Tientsin and Shih-chia-chuan.

10 2. The custom tariffs at the Tientsin
11 Maritime Customs should be so revised as to increase
12 the tariff of European and American commodities, and
13 to decrease that of Japanese commodities.

14 (The above two items were demanded by
15 DOHIHARA and MATSUI, the Chief of the Japanese
16 Special Service Board in Peiping, through Mr. Chen
17 Cho-sung, the Director of the Peiping and Liaoning
18 Railway, to General SUNG and myself. These demands
19 were refused by us.)

20 "(c) Military

21 In September 1936, the Fengtai Inci-
22 dent occurred. A company of Japanese soldiers car-
23 ried out maneuvers in Fengtai. They passed through
24 the garrison line of the Chinese Army. Clash ensued
25 when our patrols attempted to halt them. Although

CHING

DIRECT

1 it was immediately settled, the Japanese use this as
2 a pretext for reinforcement of their troops which
3 occupied Fengtai. It was a battalion, under the com-
4 mand of Major ICHINOGE, Kiyonao.

5 "Besides, there was another instance. MATSUI,
6 Iwane, in the Autumn of 1925, came to Peiping. He
7 was a General in retirement at that time, and ad-
8 vocated Greater Asiaism. He hoped to establish a
9 branch of the Greater Asia Association in Peiping.
10 Through the introduction of Mr. CHEN Cho-sung, Di-
11 rector of the Peiping and Maoning Railway, he met
12 General SUNG and myself. Both of us expressed our
13 disfavor. MATSUI, in his conversation with me,
14 advocated that Asia should be the Asia of the Asiatics,
15 and that European and American influences should be
16 expelled. I smiled and replied, saying that I was
17 afraid that what he meant by Asia of the Asiatics was
18 actually the Asia of the Japanese. Unless there were
19 real equality and reciprocity, nothing could be dis-
20 cussed."

21 (Signed) "CHING Teh-chun

22 "Formerly, Deputy Commander of the 29th
23 Army,

24 "At present, Vice-Minister, Ministry
25 of National Defense.

"Dated: 10 June 1946. at Nanking."

CHING

DIRECT

1 And I have also an affidavit here -- a
2 statement, if the Court please -- which is No.
3 118, entitled -- exhibit 198, not 118, if the
4 Court please:

5 "A FACTUAL ACCOUNT OF JULY 7th INCIDENT.
6 By General Ching Teh Chun.

7 "(Formerly Mayor of Peiping and con-
8 currently Vice-Commander of the 29th Army. At
9 present, Vice-Minister of Military Operations)

10 "1. PROLOGUE

11 "A. The Political and Military Conditions in
12 Hopei and Chahar Provinces Prior to the War of
13 Resistance.

14 "1. Political -- Before the Incident of
15 July 7th, the Hopei-Chahar Political Council was
16 the responsible institution in charge of political
17 affairs in Hopei and Chahar Provinces. General
18 Sun Che-Yuan was the Chairman of the said Council,
19 being appointed by the National Government. The
20 Council had jurisdiction over Hopei and Chahar
21 Provinces and Peiping and Tientsin Municipalities.
22 General Feng Chi-An and General Liu Ju-Ming were
23 the Governor of Hopei Province and Chahar Province
24 respectively. I, myself, was then Mayor of
25 Peiping, while General Chang Chi-Chung, who later

CHING

DIRECT

2,210

1 fell gallantly for the country as Commander-in-
2 Chief, was then Mayor of Tientsin.

3 "Since their costless invasion of the
4 Chinese North-Eastern three Provinces, followed
5 by the invasion of the Jehol Province, and the
6 Battle of the Great Wall, the Chinese aggressors
7 considered all these Provinces in North China as
8 something that could be very easily taken over.
9 Peiping and Tientsin, therefore, became the front
10 line of national defense. However, all the poli-
11 cies of the local authorities in Hopei, Chahar,
12 Peiping and Tientsin were formulated and carried
13 out in conformity with instructions and laws pro-
14 claimed by the National Government. For example,
15 the election of representatives of the People's
16 Congress, the concentrated military training of
17 all college students, were considered by the Japan-
18 ese aggressors as measures inconsistent with the
19 status of special area. Repeatedly, Japanese
20 opened negotiations and interfered with such ad-
21 ministration, but all the inducements and threats
22 failed. Finally they resorted to the military
23 aggression on July 7th, 1937.

24 "2. Military -- In North China, the 29th
25 Army was the main force, which had its garrisons

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DIRECT

1 all over Hopei, Chahar, Peiping and Tientsin. At
2 the time of the Incident, the 37th Division under
3 the command of General Feng Chi-An was stationed
4 in the suburbs of Peiping, namely, Nan-Yuan, Peip-
5 Yuan, Si-Yuan, Lukuochiao (Marco Polo Bridge),
6 Chan-Sin-Tien, and Paoting. The 38th Division
7 under the command of General Chang Chi-Chung was
8 stationed at Tientsin, Young-Chung, Langfang,
9 Chuan-Liao, Chen, Taku, Tangku, and along the
10 Tientsin-Pukow Railway such as Na-Chan and Tsang-
11 chow. The 143rd Division under the command of
12 General Liu-Ju-Ming was stationed in the Chahar
13 Province, at Kalgan, Chang-Pei, Chai-Kuo-Pao,
14 Yeng-Ching, Nankow, etc. The 132nd Division
15 under the command of General Chao-Teng-Yu was
16 spread over the southern part of Hopei Province,
17 namely, Ta-Ming, Ho-Chien, Hsien-Hsien, Jen-Chiu,
18 etc.

19 "Lukuochiao (Marco Polo Bridge), where
20 the Incident of July 7th broke out, is situated
21 about 20 Li southwest to the Chang-Yi Gate of
22 Peiping City. The District Government of the
23 Wan-Ping Hsien was at the east of the bridge.
24 The city of Wan-Ping was not large. Both inside
25 and outside of the city of Wan-Ping were guarded

CHING

-DIRECT

1 by troops of the 37th Division. This place, being
2 on the main communication line west of Peiping,
3 was strategically very important. Japanese forces,
4 stationed at Fengtai, had repeatedly demanded the
5 withdrawal of the Chinese garrison from this place,
6 and also from Chan-Sin-Tien. All these demands
7 were refused by our side in unmistakeable terms.
8 In the winter of 1936, Japanese intended to rein-
9 force their garrison force, and planned to build
10 barracks and airfield in the area between Fengtai
11 and Lukuochiao (Marco Polo Bridge), in order to
12 control completely North China. In spite of their
13 efforts in repeated negotiations, we refused them
14 in severe wordings. Thus frustrated, Japanese
15 changed their tactics. They attempted to lay
16 their hands on the local inhabitants by inducing
17 and threatening them to lease or sell the lands
18 voluntarily to the Japanese. But, according to
19 the report of Commissioner Wang Leng-Chai, who
20 governed that area, the local residents had no
21 intentions to lease or to sell the lands belonging
22 to them. The residents made sworn statements to
23 that effect and authenticated these statements
24 with their finger prints. One day, HASHIMOTO,
25 the Chief of Staff of the Japanese Garrison Forces

CHING

DIRECT

1 in North China, Wachi, and some other Japanese
2 officers called on me and again requested to buy
3 these lands. They argued that the local inhabi-
4 tants desired to lease or sell voluntarily, yet
5 it could not be realized, apparently due to the
6 opposition of the Government in North China. My
7 reply was that, no right of land in any country
8 could be freely leased or sold to foreigners. If
9 we asked for a lease or purchase of land in the
10 vicinity of Tokyo, could that be allowed by your
11 Government. In the last minimum, landed proper-
12 ties owned by private persons who enjoy ownership
13 of such properties could not be disposed of by the
14 Government at will. Since you asserted that the
15 residents were willing to sell their lands, what
16 was the proof of this assertion. HASHIMOTO coun-
17 tered by demanding us to produce proof of the un-
18 willingness to lease or sell their lands on the
19 part of the residents. Upon this I produced the
20 sworn statements of the residents authenticated
21 with their finger prints and forwarded to me by
22 Commissioner Wang, to the effect that they would
23 not sell any land. HASHIMOTO and other Japanese
24 officers, upon seeing these documents, could not
25 say anything. This episode which brought dis-

CHING

DIRECT

1 grace and anger to them must have embittered them.
2 From that time on, under the pretext of maneuvers
3 they hoped to invade and occupy Wan-Ping City by
4 catching us unprepared. This was the immediate
5 cause leading to the outbreak of the Incident.

6 "B. Stages of Japanese Aggressions

7 "1. Alienation and Estrangement -- The Japa-
8 nese attempted to alienate and estrange the local
9 authorities in North China from the Central Govern-
10 ment by inducements and by threat hoping thereby to
11 disintegrate and destroy separate areas one after
12 another. The numerous attempts they made could
13 be summed up as inducements by bribery and threat
14 by force. All these attempts, however, were met
15 with flat refusal from the local authorities.
16 Their conspiracy could by no means be realized.
17 This was the first stage of enemy aggression in
18 North China, a period running roughly from the
19 Autumn 1935 to the Summer 1936."

20 THE PRESIDENT: This is a convenient
21 break, Colonel Morrow. We will adjourn now for
22 fifteen minutes.

23 (Whereupon, at 1045, a recess
24 was taken until 1100, after which the pro-
25 ceedings were resumed as follows).

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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 MR. McMANUS: If your Honor please, I would
4 like to interpose an objection to the continuance of
5 the reading of this document. It obviously contains
6 the theories and opinions of the witness here, and
7 does not confine itself to the statement of facts.

8 THE PRESIDENT: It certainly should not be
9 in that form, but I am afraid we will have to receive
10 it for what probative value it has, Mr. McManus.

11 COLONEL MORROW: May I proceed, if the Court
12 please?

13 THE PRESIDENT: Yes.

14 COLONEL MORROW: (Reading continued) "Eco-
15 nomic Monopoly--The Japanese hoped to attack economic
16 monopoly under the mask of friendship and fraterniza-
17 tion and the watchword, 'equality and reciprocity.
18 The concrete demands made by them were: a. To con-
19 struct a Tsang-Shih Railway (between Tsangchow and
20 Shih-Chia-Chwang, both in southern Hopei), b. To de-
21 velop the Lung-Yen Iron Mines (in Chahar Province),
22 and c. To revise Maritime Custom Tariffs at Tientsin,
23 in such a way as to raise tariffs on European and
24 American commodities, and to lower tariffs on Japanese
25 commodities.

CHING

DIRECT

1 "All these demands, the acceptance of which
2 would impair the sovereignty of China, were flatly
3 refused. This was the second stage of Japanese ag-
4 gression in north China. The period covered ran
5 roughly from the Summer 1936 to the Spring 1937.

6 "Threat by Armed Forces--After realizing
7 that alienation, estrangement, and attempts to attain
8 economic monopoly had all failed, the Japanese finally
9 decided upon threat by armed force. They hoped to
10 reach their goal without fighting. At the beginning
11 of the Lukuochiao (Marco Polo Bridge Incident), Japan-
12 ese had no anticipation other than Chinese submission
13 after a blow dealt to the Chinese by their compara-
14 tively superior forces. They anticipated that Hopei,
15 Shansi, Shantung, Chahar, and Dueiyuen Provinces
16 could thus be turned into a region of special status,
17 thus realizing the second step in the plan of General
18 TANAKA for the conquest of the whole world. They
19 never thought that, at the call of our supreme leader,
20 all Chinese would rise and take up the War of Resis-
21 tance on all fronts. As to the drawn-out War of Re-
22 sistance over long, long period, and the fact that we
23 never wavered all the way through, was even more un-
24 expected by the enemy.
25

CHING

DIRECT

1 II. FACTUAL ACCOUNT OF THE INCIDENT

2 "At 0010, in the evening of July 7th, 1937,
3 I received a report from the Hopei-Chahar Foreign Af-
4 fairs Commission, which stated that the said commission
5 had received a telephone call from MATSUI, the Chief of
6 the Japanese Special Service Board, saying: 'One com-
7 pany of Japanese troops, in night maneuver in the vicini-
8 ty of Lukouchiao (Marco Polo Bridge) just a while
9 ago, seemed to have heard a few gun shots fired by
10 soldiers of the 37th Division of the 29th Army station-
11 ed in the city of Wan-Ping. The gun shots brought
12 some confusion of the troops in maneuver. As a result
13 of the roll call, one Japanese soldier was found to
14 be missing. Japanese troops demanded to enter and
15 search the city of Wan-Ping this very evening.' The
16 said commission asked instructions by telephone as to
17 how to deal with the situation. I immediately replied
18 that Japanese troops, maneuvering in Chinese territory
19 at their own will, were in violation of international
20 law. Neither had they notified us in advance, nor
21 had they obtained our permission. The Chinese Govern-
22 ment has no responsibility whatsoever for the alleged
23 missing soldier. Even if it is true that a soldier
24 was really missing, we shall order the Chinese troops
25

CHING

DIRECT

1 stationed at Lukouchiao (Marco Polo Bridge) to con-
2 duct a search for the Japanese soldier on our own
3 behalf in cooperation with local police forces. My
4 instructions were transmitted to the Japanese by the
5 Hopei-Chahar Foreign Affairs Commission. Soon there-
6 after, the said commission again telephoned me and
7 reported that after transmission of the reply, both
8 the Japanese Special Service Board and the Japanese
9 troops were not satisfied. The Japanese insisted
10 on conducting a search in the city by force. If re-
11 fused, they decided to encircle the walled city. I
12 again immediately replied that in case of such un-
13 reasonableness on the part of Japanese, so violent
14 and barbarious we, for the sake of self-defense,
15 could only take the course of resolute resistance.
16 Then I called on Regiment Commander Chi Sin-Ten over
17 the telephone. At that time, one battalion of the
18 regiment under his command was in charge of garrison
19 duties at Lukuochiao, while other two battalions and
20 his Regiment Headquarters were at Chan-Sin-Tien. I
21 asked Commander Chi whether his regiment had maneuver-
22 ed tonight. Chi replied in the negative. I asked
23 him whether there were any Japanese troops maneuver-
24 ing in the vicinity of Lukuochiao (Marco Polo Bridge).
25 Chi replied that he had received no such information,

CHING

DIRECT

1 but that he would immediately send out his men to
2 investigate. Thereupon, I informed him the negotia-
3 tions between the Japanese and us, and ordered him
4 to send at once able men to proceed toward the direc-
5 tion of Fengtai, to detect possible Japanese troop
6 movements. On the other hand, I ordered by telephone
7 Commissioner Wang Lun-Chai, who was concurrently the
8 Magistrate of Wan-Ping Hsien, to investigate and to
9 report on the maneuvering of Japanese troops and whether
10 any Japanese soldier was missing. Soon, I received a
11 telephone call from Commander Chi, who reported that,
12 according to the report of the officer dispatched to-
13 wards the direction of Fengtai, about a battalion of
14 Japanese troops with six pieces of artillery, was now
15 advancing from Fengtai to Lukuochiao (Marco Polo Bridge)
16 and whether there was any reinforcements following
17 this column had to await further detection. There-
18 upon, as the Vice-Commander of the 29th Army, I im-
19 mediately ordered Regiment Commander Chi to well
20 guard the city of Wan-Ping, that not a single Japanese
21 soldier was to be allowed to come in, that not a single
22 inch of territory was to be allowed to lose, that in
23 virtue of our responsibility as soldiers, to guard
24 our territory, the Wan-Ping city would be, in case
25

CHING

DIRECT

1 of necessity, the most precious and glorious grave-
2 yard of our ranks and files, that we should share
3 the same fate with the city. If they did not open
4 fire first, we should not first open fire upon them.
5 If they should first open fire, we were sure to deal
6 them fatal blows. After having my order, Chi sent
7 another battalion to enforce the guard at Lukouchiao
8 (Marco Polo Bridge), and he himself led the battalion
9 there to reinforce the defense. At the same time,
10 Commissioner Wang Lun-Chai came to Peiping to report
11 in person the factual result of his investigation.
12 So, I sent Commissioner Wang, together with Wei Tsung-
13 Han, Commissioner of Foreign Affairs of Hopei-Chahar
14 Provinces, Lin Ken-Yu, also a member under Commission-
15 er Wei, and Chou Jun-Ye, Chief of Communication Sec-
16 tion, of the Pacification Headquarters, to negotiate
17 with MATSUI. At 0500 in the morning, successive re-
18 ports informed me that Japanese troops had come to
19 the edge of the city and demanded the entry of the
20 city by force, that we had to prepare for the defense
21 on the one hand and to try to stop their entry by
22 negotiation on the other. The Japanese, realizing
23 by that time that there was no hope for them to take
24 the city of Wan-Ping without fighting, finally encir-
25 cled it on three sides. Our forces put up defense

CHING

DIRECT

1 works on the walls. Around 0600, enemy machine gun
2 fire began to attack the city, and enemy forces came
3 towards it. This was the very beginning of the Sino-
4 Japanese war, but the responsibility of the Incident
5 was also definitely fixed (upon Japan).

6 "Hostilities on the 8th and 9th of July
7 were heavy, and Japanese suffered many casualties.
8 The railway bridge leading to Chan-Sin-Tien was oc-
9 cupied by Japanese in the morning of the 8th, and on
10 the same night, two companies of Chinese troops,
11 each soldier equipped with a pistol, a sword, and
12 four hand grenades, moved up stealthily. They sud-
13 denly attacked, when they approached the bridge head.
14 The enemy, about a company strong, was surprised and
15 most of them were killed. Japanese, seeing that
16 they were suffering setbacks, sent MATSUI and others
17 to me on the following day, and asked for negotiation.
18 I had foreseen their intention before they came, so
19 I refused them. Soon thereafter, they came again
20 and explained the intention of truce, adding that
21 the missing soldier had already been found, so that
22 a peaceful settlement would be feasible. We began
23 to discuss and, as a result, decided on three con-
24 ditions: (a) All military actions should cease on
25 both sides, (b) Troops of both sides should return

CHING

DIRECT

1 to their original positions, and (c) the 37th
2 Division which entertains more hostile feelings
3 against Japan, should be replaced by some other unit
4 of the 29th Army for the defense of Wan-Ping City.
5 An understanding was also reached that both sides
6 should refrain from developing henceforth incidents
7 of similar nature. Yet, these conditions were
8 nothing but Japanese tactics to delay and thus to
9 gain time. Utilizing this breathing space, units
10 of the Kwantung Army were sent to Peiping and
11 Tientsin area for attack. We detected their con-
12 spiracy, and had to order hastily the Division under
13 the command of General Chao stationed in Ta-ming and
14 Ho-Chien in southern Hopei to proceed to Peiping.
15 At that time, General Sung Che-Yuan was on leave of
16 absence in his home town in Shantung. After my re-
17 peated telegrams asking for his return, he arrived
18 in Peiping on the 12th of July. We discussed strate-
19 gies and policies. War again broke out on the 14th,
20 and more intensified than before. Every day, enemy
21 shelled the Wan-Ping city by artillery, to cover the
22 advance of their infantry, but were all repulsed by
23 our army. On the 25th of July, enemy airplane, in
24 reconnaissance over the Peiping-Taming highways dis-
25 covered that our troops of large numbers were advancing

CHING

DIRECT

1 northward, and the spearhead had already arrived at
2 Nanyuan. On the 26th of July, Japanese handed us
3 an ultimatum to the effect that the 37th Division be
4 withdrawn from the Peiping area within 24 hours,
5 failing which they would attack us by large forces.
6 To defend ourselves, we attacked immediately on the
7 27th enemy troops at Fengati and in the vicinity of
8 Lukuochiao (Marco Polo Bridge). In the same evening,
9 we killed quite a number of Japanese at Fentai, re-
10 captured the west flank and the south flank of
11 Fēngtai, and pressed on near the enemy headquarters
12 there. KATSUKI, Seiji, the Japanese Commander in
13 Chief, ordered Japanese reinforcements from Tungchow
14 and Tientsin, with strong equipment and more than 30
15 airplanes, to make an onslaught. In the early morn-
16 ing of the 28th, the enemy with the combined forces
17 of the land and air, fiercely attacked Nan-yuen with
18 all their strength. Large scale hostilities developed
19 with heavy casualties unprecedented since the out-
20 break incident. Around 2 p.m., most regretfully,
21 General Chao Tung-Yu, Division Commander, General
22 Tung Ling-Kou, Vice Army Commander, were both killed
23 in action. Casualties reached more than 5,000 in-
24 cluding both dead and wounded among our officers
25 and soldiers.

CHING

DIRECT

1 "Some time before this, repeated telegrams
2 from our Supreme Commander (Generalissimo Chiang)
3 ordered General Sung, Chairman of the Hopei-Chahar
4 Political Council to proceed to Paoting (in southern
5 Hopei) and to direct operations from there. General
6 Sung now acted as directed by these orders. I my-
7 self went to Paoting with him in the night of 28th.
8 Considerable success was scored by the Chinese forces
9 in Tientsin, who made their attacks bravely on the
10 29th and 30th of July. Subsequently they also evacua-
11 ted according to orders received. They fell back to
12 the south of Tientsin along the Tientsin-Pukow Rail-
13 way, while other troops were put up along the Peiping-
14 Hankow Railway. In close collaboration between each
15 other, they began to engage themselves in long-term
16 Resistance against the enemy. This was what happen-
17 ed during the Lukouchiao (Marco Polo Bridge) Incident
18 and the War of Resistance thereafter.

19 "Leading Japanese officers who instigated
20 this Incident were:

21 KATSUKI, Seiji, Commander in Chief of the
22 Japanese Garrison Forces in
Tientsin

23 KAWABE, Seiso, Brigadier Commander

24 MUTAGUCHI, Renyam, Regiment Commander
25

"But the instigator at the very beginning of Japanese aggression in north China was DOHIMARA, Kenji, the same man who instigated the Mukden Incident of 18 September 1931. All those men should be held responsible for the war of aggression. As to the narcotic policy and various atrocities committed in enemy occupied areas, which according to reports from all sides, were intensified as time went on. Much to my regret I could not produce definite and strong evidences for these activities and atrocities since I had left for operations along Peiping-Hankow, Peiping-Taming, and Tientsin-Pukow Railway lines."

(Signed) "CHING Teh-Chun
Formerly Mayor of Peiping and Concurrently
Vice-Commander of the 29th Army

At present, Vice-Minister, Ministry of Military
Operations"

CHING

CROSS

1 COLONEL MORROW: I assume I may waive the
2 reading of the certificate, in view of the testimony.

3 That completes the affidavit, if your Honor
4 release.

5 THE PRESIDENT: The defense may cross-
6 examine now.

7 MR. OHTA: I am OHTA, Kinjiro, counsel for
8 the defendant, DOHIHARA. I would like to ask a few
9 questions to the witness, General CHING Teh-chun.

10 CROSS-EXAMINATION

11 BY MR. OHTA:

12 Q The witness stated that the two accounts
13 had been taken by the prosecution upon oath. Were
14 they really taken on oath?

15 A The first statement was a statement by me on
16 the 2nd of April, which statement was a statement of
17 conscience and factual accounts. I didn't write them
18 under oath. The second statement was written on the
19 10th of June. The circumstances were the same. I
20 wrote out of my conscience and according to facts, and
21 was not under oath.
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1 C Then I repeat it again, it is not an
2 affidavit, is it?

3 A This statement was firstly written and then
4 as is proved correct, I gave my oath.

5 Q I have heard that in your country, that is,
6 in China, there is a special formula for taking
7 statement. Did you comply with that formula?

8 THE MONITOR: Correction? "what formula
9 that you use."

10 A When the prosecutor asked me whether the
11 statement I gave was true, I admitted that it was
12 true and then I gave my oath. That is the form
13 I adopted.

14 Q Is the witness acquainted with Mr. Chen
15 Ko, the Mayor of Tientsin at the time of June 1935?

16 A Yes, I know.

17 Q Is the witness acquainted with Mr. Chen
18 Chueh-shen, the President of the Peining (Peiping-
19 Liaoning) Railway Company?

20 A Yes, I know.

21 Q Was the so-called "DOIHARA-Ching Teh-Chun
22 agreement" made as a result through the good offices of
23 Mr. Chen Chueh-Shen and Mr. Chen Ko?

24 A There was no so-called "Ching-DOIHARA agree-
25 ment" in existence. With regard to the North Hopei

CHING

CROSS

1 Affair, Ching, on the order of the Central Government,
2 discussed the matter over with DOIHARA with a view
3 to settle this matter temporarily. At the time, Chen
4 Ko, the Mayor of Tientsin, and Chen Chueh-shen,
5 Director of the Peining Army Railway Administration,
6 were the people responsible for the interpretation.

7 Q Is the so-called "North Chapei Incident" --
8 North Chahar Incident -- the so-called "North Chahar
9 Incident" -- are the facts concerning the North Chahar
10 Incident like those? In July 1935 -- in June 1935,
11 two officers and two men of the Japanese Army, when
12 they were on their way to Kalgan via To Lun and Chang
13 Peh Hsien riding in a motor car were fired upon by
14 the Chinese garrison troops at the eastern gate of
15 Chang Peh Hsien; and then they were beaten up by
16 those Chinese guards and then they were taken,
17 captured and detained at a military police station.
18 Was that the cause of the Incident?

19 THE MONITOR: Correction: "Two Japanese
20 officers and NCO's" instead of "soldiers". And
21 another correction: "Northern gate" instead of
22 "eastern gate" and "they were confined for four or
23 five days."

24 A The facts are slightly different from what
25 had occurred then. These are the facts. There were

CHING

CROSS

1 then two Japanese officers and two NCO's travelling
2 through Chang Peh Hsien at the Chang Peh Hsien gate,
3 the gate of the country. They were demanded to pro-
4 duce their passports. These passports, according
5 to the then regulations in force, would have to be
6 presented by the Japanese Consulate with the under-
7 standing from the Chinese authorities. At that time
8 the guards, the guard on duty at the gate asked the
9 Japanese to produce their passports which the Japan-
10 ese refused. As the Japanese refused to produce their
11 passports, the guard, in order to carry out their
12 duties, insisted on asking them to produce the pass-
13 port. At that time they took the posture of aiming
14 with their rifles they had on their hands at the
15 Japanese but they never shot it. In the course of
16 their quarreling a platoon leader came to the scene.
17 Then this platoon leader took this Japanese to the
18 inside of the city gate to the headquarters of 132nd
19 Division. As soon as they got to the Division Head-
20 quarters' premises, the Japanese were given, were
21 treated to a dinner and at the same time the platoon
22 leader made a report to the authorities. As they
23 were having their dinner there, and this report and
24 so forth took some time of, say, three to four hours,
25 they were never detained.

CHING

CROSS

1 Q Were not those negotiations terminated
2 amicably on the 23rd of June and confirmed by the
3 Central Government representatives on the 27th of
4 the same month?

5 A I cannot remember correctly the accurate
6 date but I do remember it is around 20th of June
7 when the settlement was brought forth. But, this
8 settlement was a result of the concessions made
9 by the Chinese Government with a view to secure peace.

10 Q In order to conclude those negotiations,
11 did both the Japanese and the Chinese sides make
12 considerable concessions in order to attain the
13 peaceful conclusion of the treaty? Being motivated
14 with a desire to conclude the negotiations peace-
15 fully, the Japanese side made considerable concessions
16 as compared with the conditions put forward by them
17 at the very outset of the negotiations, wasn't it
18 true?

19 THE MONITOR: Correction: "It may be
20 that Chinese side made concessions but isn't it
21 true that Japanese also, out of their desire for
22 peace, softened up their initial demands and was
23 not the agreement reached out of concession on both
24 sides?"

25 A The question was then temporarily settled.

CHING

CROSS

1 But if you say that this was, the settlement was
2 obtained through the repeated concessions made on
3 the part of the Japanese, that is not true.

4 Q Was not the fact that the negotiations
5 were concluded peacefully greatly welcomed by the
6 Chinese side also?

7 A As I said just now, the Chinese Government,
8 in order to secure peace, had under pains come to
9 that settlement with the Japanese. It is not -- it
10 was not an agreement out of the wish of the Chinese
11 people.

12 Q In the document entitled "Facts of Japanese
13 Aggression in North China" dated the tenth of June,
14 1946, you stated that aggression of the Japanese
15 military clique did not cease until then, et cetera.
16 However, were not these negotiations conducted peace-
17 fully with the hope to prevent the clash of the two
18 parties?

19 A You said up to now the Japanese aggression
20 has not been stopped. That is not the case. Up to
21 now it is stopped but then it was not stopped. Will
22 you please show me that paragraph?

23 (Whereupon, defense counsel brought
24 the aforementioned document to interpreters'
25 table.)

CHING

CROSS

1 THE PRESIDENT: We will recess now until
2 half past one.

3 (Whereupon, at 1200, a recess was
4 taken.)
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1 to state the reasons for this challenge for cause.

2 First, that there is no provision in the
3 Charter for this additional appointment. The Charter
4 provides: "The Tribunal shall consist of not less
5 than six members nor more than eleven members,
6 appointed by the Supreme Commander for the Allied
7 Powers from the names submitted by the Signatories to
8 the Instrument of Surrender, India, and the Common-
9 wealth of the Philippines." In accordance with the
10 provisions of the Charter, this Tribunal has been com-
11 **pletely** constituted with the maximum of the members
12 eligible for appointment. The Member now challenged
13 is the twelfth appointee to this Tribunal. This
14 appointment is expressly prohibited by the Charter.
15 From the reading of the pertinent provisions of the
16 Charter, the express intent is that the Tribunal will
17 be fully constituted with a minimum of six members
18 thereof, and the appointment of members over and
19 above the maximum of eleven would open the door to
20 allowing new members to sit in judgment upon the
21 accused at any and all periods during this trial.
22 The exercise of the authority for the appointment of
23 members in excess of eleven could have no limits, to
24 the end that any member or members could sit at
25 different times in this proceeding. This would result

CHING

1 in a ridiculous situation as far as a just trial for
2 the accused is concerned, all contrary to the intents
3 and purposes of the Charter.

4 Next, that the addition of another member of
5 this Tribunal, if permitted, would cause this trial
6 to proceed clouded with a substantial doubt as to the
7 legality, fairness, and the impartiality of this whole
8 proceeding. That not having been present in court
9 when a substantial part of the valid testimony was
10 given and after other important proceedings had been
11 completed, the appearance now of a new member will
12 involve an appreciable risk to the substantial rights
13 of the accused, which risk cannot be avoided by a
14 private reading of the lengthy record, which, of itself,
15 only amounts to a review and does not constitute the
16 requirements of a fair and impartial trial. This
17 contemplates hearing the witnesses, listening to the
18 arguments of counsel, and taking part in the deliber-
19 ations of the Tribunal at all stages of the proceeding.

20 Next, that having served as a high ranking
21 general in the armed forces of one of the leading
22 victorious accuser nations, impartiality is incom-
23 patible with this relationship and his past official
24 duties. This fact alone presents a strong basis for
25 a challenge for cause.

CHING

1 Four. The record in this case presents no
2 evidence that the nomination of the challenged Member
3 of this Tribunal has been made by a signatory to the
4 Instrument of Surrender. Under the Charter, the
5 nomination as well as evidence of appointment is
6 essential to this record. There is no legal authority
7 for the nomination and appointment or for the Charter
8 under which the appointment is proposed.

9 Five. That the accused represented by this
10 American counsel, elects to exercise this right of
11 challenge for the reasons heretofore urged, and, there-
12 fore, moves that the newly designated Member of this
13 Tribunal disqualify himself and decline to serve as
14 a Member of this Tribunal.

15 In view of the recent resignation of the
16 American representative on this Tribunal, Mr. Justice
17 Higgins, and the acceptance or approval of the resig-
18 nation by the Supreme Commander after the Court had
19 been constituted and after it had begun hearing of the
20 evidence and proceeded substantially with the trial of
21 the issues involved and had completed two phases of
22 the case and a major part of the third, it is moved
23 that the Court declare this to be a mistrial, and
24 that a new Tribunal be appointed under a valid Charter
25 and in accordance therewith.

CHING

1 It is further urged that those challenges
2 for cause be sustained by this Tribunal and we pray
3 for such further relief as is equitable under these
4 circumstances.

5 I feel there are perhaps some other members
6 of the defense counsel who would like to argue upon
7 this proposition if the Court permits.

8 I would like to have this record show that
9 this challenge for cause is made by the American
10 counsel for OSHIMA, Hiroshi.

11 COLONEL MORROW: If the Court please, the
12 prosecution, at any rate this section of the prosecu-
13 tion, knew nothing about the sitting of General
14 Cramer, knew nothing about this motion, has not seen
15 the motion, and it is respectfully suggested that this
16 matter be deferred until the prosecution has an
17 opportunity to look into the motion and reply, if
18 necessary, unless the Court decides to proceed with-
19 out hearing from the prosecution.

20 THE PRESIDENT: We will hear all you have to
21 say today. If you want further time, probably you will
22 get it, but I will have to consult my colleagues about
23 that.

24 Mr. Smith.

25 MR. SMITH: If your Honor please, on behalf

CHING

1 of Mr. HIROTA, I would like to move briefly for a mis-
2 trial because of the substitution and the seating of
3 an American judge. The ground is that where the
4 Court sits as both judge and jury we think that up
5 until this time, without exception, the practice has
6 always been for the accused to be confronted by his
7 judge on the trial of the facts from the start to the
8 finish of the trial. There has been practically a
9 month of testimony in this case. A great deal of it
10 has been very helpful to the defense. Witness after
11 witness has appeared on the stand who did not testify
12 to the facts that the prosecution evidently expected,
13 and the new judge has lost the benefit and the
14 defendant has been deprived of the right of the
15 American judge to see and hear the witnesses and to
16 appraise their credibility.

17 THE PRESIDENT: Two questions arise here,
18 Mr. Smith: First the question of the power
19 to make the appointment, and second, the question of
20 expediency. The first question, the question of the
21 power, is the one which I think was dealt with by
22 Mr. Cunningham. But you are on the second question,
23 that of expediency. Is that so?

24 MR. SMITH: Yes, sir.
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1 THE PRESIDENT: On the question of power, I
2 may remind you -- it will not help, of course -- that
3 the French representative is the second appointment
4 to this Court by his country, so that if your conten-
5 tion is correct, there has been a mistrial throughout.

6 MR. SMITH: If your Honor please, I have
7 been here since the testimony began about a month ago
8 and my recollection is that the French Justice has
9 heard all the witnesses who have appeared.

10 Going back to your Honor's question, it is
11 not only expediency but, as I understand it, one of
12 the great cornerstones of the law which cannot be
13 undone is that an accused is entitled in a trial to
14 see and hear the witness who is against him. And it
15 is hardly arguable otherwise.

16 THE PRESIDENT: I repeat there are two
17 questions: The first one, the power to appoint; the
18 second, the expediency of an appointment at this
19 stage.

20 On the question of the power to appoint, I
21 repeat the French Judge is the second appointment by
22 his country.

23 MR. SMITH: I do not care to add anything
24 more, your Honor, other than to observe that if this
25 procedure could be followed after one month's testimony

1 is in, why couldn't it be done after six months'
2 testimony is in?

3 Thank you very much.

4 THE PRESIDENT: The question of expediency
5 is a question of fact. And to hold the American
6 representative disqualified we must find as a fact
7 that he cannot give a fair trial to the accused.

8 I am saying these things because I want them
9 met. I cannot speak for the whole Court.

10 MR. WARREN: If the Tribunal please, I am
11 the American counsel for General DOHIHARA and
12 Admiral OKA. I have had no opportunity to personally
13 speak with my clients, but I have talked with my
14 associate Japanese counsel. We do not join in the
15 motion.

16 CAPTAIN KLEIMAN: May it please the Tribunal--

17 THE PRESIDENT: Captain Kleiman.

18 CAPTAIN KLEIMAN: On behalf of the defendant
19 HIRANUMA, I have consulted with my Japanese co-counsel.
20 I know the background of General Cramer, his reputa-
21 tion for fairness, and I welcome him. I welcome the
22 representative of the United States on the Tribunal.

23 THE PRESIDENT: Mr. Furness.

24 MR. FURNESS: May the Tribunal please, as
25 American counsel for the accused SHIGEMITSU I wish to

1 join in the motion of Mr. Cunningham and the motion
2 of Mr. Smith.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: If it please the Tribunal,
5 Japanese and American counsel for Marquis KIDO have
6 no objection to Major General Cramer sitting in this
7 case.

8 THE PRESIDENT: Does any other counsel desire
9 to be heard?

10 JUDGE HSIANG: Mr. President and Members of
11 the Tribunal: As the Chinese prosecutor I do not
12 speak for the prosecution as a whole. I merely speak
13 for China.

14 China welcomes the full representation of
15 eleven nations represented in this Tribunal. China
16 especially does not like to see the non-representation
17 of the United States of America on the bench.

18 This is an international tribunal. The rules
19 of procedure and the rules relating to the admissi-
20 bility of evidence, for instance, and some other
21 matters are different in some respects from national
22 courts. The grounds presented by the defense counsel
23 for the motion I think in some respects do not apply
24 to this International Tribunal. A reasonable inter-
25 pretation of the Tribunal regarding the appointment,

1 I think there could not be more than eleven appoint-
2 ments at one single time. If there is one resignation
3 that resignation could be filled up by a new appoint-
4 ment. It is the belief of the Chinese prosecutor
5 that a new member upon assumption of duties, if he
6 studies the proceedings, can familiarize himself with
7 proceedings hitherto. There is no legal disability
8 for that Member to sit on the court.

9 For reasons stated above, China does not
10 associate itself with the sentiments expressed in the
11 motion.

12 MR. CUNNINGHAM: If the Court please, I only
13 have two observations to make on what has been sug-
14 gested.

15 Concerning the Member of the Tribunal from
16 France, that matter was seriously considered and due
17 to the fact that the second appointment was made
18 before the Tribunal had been duly constituted and
19 began listening to evidence, no objection was made.

20 On the second proposition of the resignation
21 of one of the Members of the Tribunal, it is my
22 thought that there is no provision in the Charter for
23 such procedure. If the Charter or the framers of the
24 Charter had contemplated such a situation, there is
25 nothing which would have prevented them from including

1 that in the Charter; and due to the fact that it was
2 not included we must assume that it was not intended.

3 On the matter of expediency, it is my
4 thought that it would be much better for this trial
5 to proceed with perhaps ten judges and not have the
6 additional one, rather than have the proceedings
7 clouded with the possibility of the illegality of the
8 entire proceedings. Further on the matter of expe-
9 diency, it is my thought that this is novel and new
10 procedure. Very, very few precedents have ever been
11 established on this proposition, including the matter
12 of military tribunal practice and that this, a case
13 of such importance, is, my thought, no place to begin
14 establishing such precedents.

15 THE PRESIDENT: Mr. Warren.

16 MR. WARREN: If the Tribunal please, I do
17 not like to be placed in the position of objecting to
18 any defense motion, but for the interests of my two
19 clients I do desire the presence of the new Member of
20 this Tribunal.

21 I represent a military man and a naval man;
22 and while we have one military man on the Tribunal, I
23 should like another one who probably understands. In
24 support of my position, I am bound to state that an
25 additional member to a military tribunal or a military

1 court or courts-martial, as you will, is nothing
2 unusual.

3 THE PRESIDENT: Have you looked at the German
4 Charter, Mr. Warren?

5 MR. WARREN: Sir?

6 THE PRESIDENT: Have you looked at the German
7 Charter?

8 MR. WARREN: Yes, sir, I have; and I have
9 looked at this Charter, also, and I feel that under
10 this Charter he can sit.

11 THE PRESIDENT: I understand that under the
12 German Charter representation of a country is excluded
13 after a certain time. There is no such provision in
14 our Charter.

15 MR. WARREN: That is right, sir.

16 THE PRESIDENT: Our Charter appears to con-
17 template that so many nations will be represented.
18 Would there not be an implied power to maintain that
19 representation in the absence of anything to the con-
20 trary?

21 If my recollection of the German Charter is
22 correct -- and it may not be -- then they saw fit
23 there to preclude the very position which you say
24 arises here without any provision.

25 MR. WARREN: I am sorry, your Honor.

1 Yes, your Honor, I cannot agree that this
2 Charter follows the German Charter, the Nuernberg
3 Charter. There are dissimilar things in them. This
4 Charter may be amended and re-amended.

5 A Member of this Tribunal, for instance, may
6 become ill and leave and be gone for a period of time
7 and come back and resume his duties. And if a member
8 is replaced and replaced with another, it is my posi-
9 tion that it is inherent in a military tribunal to do
10 that. Because of the exigencies that arise from time
11 to time in the field, the removal of officers who sit
12 on military courts from one jurisdiction to another--

13 As I stated, the necessity for removal of
14 officers from time to time even from a military court,
15 you must have a replacement. Otherwise many, many
16 culprits would go unpunished.

17 THE PRESIDENT: Did I hear you say that
18 vacancies have to be filled on military courts; other-
19 wise offenses would go unpunished?

20 MR. WARREN: In this respect, your Honor:
21 An American general courts-martial is comprised of
22 not less than five members. It might be that those
23 members would go below five, and if you could not
24 replace a tribunal it might mean the starting of
25 another case and continued operation until such time

1 as your witnesses in the passage of time with the
2 witnesses' loss of memory or other documents or other
3 things that it could well be that a culprit might not
4 go punished. It is not unknown.

5 THE PRESIDENT: Suppose six members of this
6 Court were killed in, say, a motor car accident or
7 a plane accident, so that a quorum could not be
8 obtained. Would that terminate the proceedings with-
9 out a verdict?

10 MR. WARREN: Not necessarily. As I view
11 military tribunals, and I think those who are familiar
12 with at least American courts-martial, and Manual for
13 Courts-martial would know that the Tribunal could be
14 increased by appointment by qualification.

15 THE PRESIDENT: Why couldn't this Tribunal
16 be increased by further appointments?
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MR. WARREN: If the Supreme Allied Commander had the authority to draw up the Charter in the first place he has authority to amend it, and he can amend it and has amended it.

THE PRESIDENT: I don't know what the tenor of your argument is, but I suppose you are really admitting that if there is power to cancel there ought to be power to amend.

M. WARREN: That is right. Maybe I have not made myself plain. I am arguing in opposition to the motion. I thought I had made myself plain, and I thought the Tribunal understood me, but perhaps it didn't. Certainly, I am in favor of the new member sitting as a Member of this Tribunal, and think that the Supreme Allied Commander has every right to appoint him. And the only test, it appears to be, is, can the new Justice of this Tribunal familiarize himself enough with what has gone on in the past to be able to render a fair and impartial judgment in the case? My position is that he can read the record and can do that. That, of course, is a question of fact.

It is my further position that if the Supreme Allied Commander did not think that he could

1 he would not have appointed him.

2 There is only one further requisite that
3 I am sure the Member himself is familiar with, being
4 familiar with military law as he is, and that is,
5 if in his own judgment he cannot sit and render a
6 fair and impartial judgment in the case, he would
7 himself disqualify, and I feel certain that he would
8 do so. Having offered himself, I feel that he feels
9 himself qualified.

10 Now, my argument does not necessarily mean
11 that I agree with these principles of law, but they
12 are law as I view them, as made so by the Charter
13 and by military law as I understand it. And, in this
14 particular instance, I would like the Tribunal to
15 consider seriously what I have to say concerning the
16 qualifications of the new Member of the Tribunal.

17 CAPTAIN KLEIMAN: I am sorry to disturb
18 your Honor again. I wish to call the Tribunal's
19 attention to Article 4c of the Charter which reads,

20 "Absence. If a member at any time is absent
21 and afterwards is able to be present, he shall take
22 part in all subsequent proceedings; unless he declares
23 in open court that he is disqualified by reason of
24 insufficient familiarity with the proceedings which
25 took place in his absence."

1 Such provision, may it please your Honor,
2 is not in accordance with the setting up and action
3 on the part of Members of civil or military courts
4 as I know them in the United States. I don't think
5 it lends toward a fair trial. However, as long as
6 this provision is allowed to remain in the Charter,
7 I don't think any greater evil is accomplished by
8 allowing a new Member to come in and acquaint himself
9 with the proceedings, and I know that General Cramer
10 has that ability and has that sense of fairness that,
11 unless he can fully and completely acquaint himself
12 with the facts in this case, he, himself, would
13 disqualify himself; and I request, if the Tribunal
14 decides in favor of the motion made by the American
15 counsel, that the Tribunal ask of the Supreme Com-
16 mander to amend the Charter to allow the representa-
17 tive of the United States to remain on the Tribunal.

18 THE PRESIDENT: The Court will treat Captain
19 Kleiman's request as a submission.

20 MR. FURNESS: If the Court please, lest there
21 be misunderstanding, I speak in favor of the challenge
22 and in favor of the motion for a mistrial.

23 Colonel Warren has argued that under mili-
24 tary law, procedure substitutions can be made. That
25 is so in court martials. The reason it is so is be-

1 cause the Articles of War have the specific provi-
2 sion for it. It is also true of the military com-
3 missions trying cases in Yokohama and Manila. The
4 reason it is true is because the order appointing
5 those commissions has a specific provision for sub-
6 stitutions.

7 THE PRESIDENT: This is not incompatible
8 for a fair trial with Americans, but you are submit-
9 ting it is incompatible for a fair trial with Japan-
10 ese.

11 MR. FURNESS: I am arguing, sir, that there
12 is no provision in this Charter and that I believe
13 the omission is intentional.

14 I also wish to point out that, under the
15 Articles of War, if the number of men sitting is
16 reduced below a certain amount, the case must begin
17 again de novo.

18 As to the Nuernberg Charter, I would like
19 to point out that, under that Charter, there is a
20 specific provision for alternates who sit throughout
21 the trial who hear exactly the same evidence as that
22 heard by the Judges sitting; and, if he withdraws
23 or is withdrawn, that they sit as Judge and act on
24 their own knowledge. I believe that there is a
25 specific provision in that Charter, too, that there

1 shall be no substitutions.

2 THE PRESIDENT: We will recess now for
3 fifteen minutes.

4 We may or may not be in a position to give
5 our decision. We understand we have heard all the
6 arguments, and we reserve our decision.

7 (Whereupon, at 1445, a recess was
8 taken until 1515, after which the proceedings
9 were resumed as follows:)

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1 MARSHAL OF THE COURT: The Tribunal is
2 now resumed.

3 THE PRESIDENT: The Tribunal, by a majority,
4 holds that General Cramer, the American representative,
5 is eligible to sit as a Member of this Tribunal, and
6 dismisses the motion. General Cramer took no part in
7 the decision.

8 Mr. Smith.

9 MR. SMITH: If your Honor please, in order
10 to save the record, and on behalf of all counsel who
11 did object, I would like to ask your Honor to allow
12 the usual exception.

13 THE PRESIDENT: The application for the
14 exception is recorded.

15 Is there any further cross-examination of
16 the witness?

17 MR. OHTA: I am counsel OHTA for the de-
18 fendant, DOHIHARA.

19 CROSS-EXAMINATION (Continued)

20 BY MR. OHTA:

21 Q I should like to have the witness reply to
22 a question addressed to him this morning.

23 A Prior to the recess the defense counsel
24 was asking the question about the statement I made,
25 that is, after the settlement of Chapei Affairs, the

CHING

CROSS

1 Japanese aggression has never stopped. The opinion
2 I gave in that statement was that the Chinese govern-
3 ment, desiring to secure peace, had under terrible con-
4 ditions, come to a settlement with the Japanese over
5 the question of Chapei Affairs; but the military
6 aggression undertaken on the part of the Japanese
7 militarists had never ceased, even after the Chapei
8 settlement was effected. By the statement, "has never
9 stopped -- the aggression has never stopped," I meant
10 to say that Japanese military aggression has never
11 stopped after the agreement was signed. It is not
12 that up until now the aggression has never stopped.

13 Q That is all I wish to know with respect
14 to this point. Next, I should like to put a question
15 with respect to the establishment of the Hopei-Chahar
16 Political Council. According to your affidavit, Mr.
17 Witness, the defendant, DOHIHARA, went to Peiping in
18 September, 1935, and stayed there until the establish-
19 ment of the Hopei-Chahar Political Council. There
20 seems to be some error in that statement, and I wish
21 to point out to you that, although he stayed in Peiping,
22 he frequently went to Tientsin; is that not a fact?

23 A General DOHIHARA, it seems to me, was then
24 living in the most eastern three provinces. He fre-
25 quently came to Peiping, and frequently went to Tientsin.

CHING

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1 Q Then, is it not a mistake to state that
2 DOHIHARA went frequently to Peiping for purposes of
3 his project in September, 1935?

4 A In 1936, June, I had negotiated with
5 DOHIHARA in regard to matters pertaining to Chapei.
6 Ever since September, 1935, up to February, 1936,
7 I had frequently seen DOHIHARA.

8 THE PRESIDENT: This is a convenient
9 break. We will adjourn now until 9:30 tomorrow
10 morning.

11 (Whereupon, at 1600, an adjourn-
12 ment was taken until Tuesday, 23 July 1946, at
13 0930.)
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